

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7270

Joint Petition of Verizon New England Inc., d/b/a)
Verizon Vermont, certain affiliates thereof, and)
FairPoint Communications, Inc. for approval of an asset)
transfer, acquisition of control by merger and associated)
transactions)

Order entered: 11/6/2007

ORDER RE MOTION TO REOPEN RECORD

On October 25, 2007, One Communications Corporation ("One Communication") filed a motion that the Board reopen the record to allow additional factual information, suspend the schedule, and hold additional hearings in this proceeding. One Communication states that Fairpoint Communications, Inc. ("Fairpoint") recently entered into a Settlement Agreement with several competitive local exchange carriers ("CLECs") that purports to resolve a number of CLEC-related issues in dispute in Vermont, New Hampshire, and Maine. The Settlement Agreement also incorporates a number of conditions that the signatories will ask the Board (and regulatory agencies in New Hampshire and Maine) to adopt as conditions of the proposed merger.¹ One Communication argues that the Board should make the Settlement Agreement a part of the evidentiary record in this proceeding and allow further hearings. In particular, One Communication seeks an evaluation of whether the agreement would apply to other, non-signatory CLECs and whether the terms are unjustly discriminatory.

Fairpoint and Verizon New England Inc., d/b/a Verizon Vermont ("Verizon VT"), oppose One Communication's motion. They assert that One Communication "fails to identify any material factual issue requiring an evidentiary hearing." In addition, they express concern that further hearings would unnecessarily delay the proceeding, potentially endangering their proposed closing date. Fairpoint states that it remains willing to make the terms of the

1. Fairpoint filed a copy of the Settlement Agreement with the Board on October 26, 2007. Fairpoint states that the filing is for informational purposes.

Settlement Agreement available to other CLECs that are willing to join the agreement. Fairpoint and Verizon also contend that, if the Board adopts the conditions specified in the Settlement Agreement, there is no risk of unjust discrimination since the conditions would apply to all CLECs. Fairpoint and Verizon maintain that the Settlement Agreement need not be entered into the record, but instead should be viewed as a position statement. Finally, these parties argue that further hearings are not needed.

In this Order, we deny One Communications's request to reopen the record, suspend the schedule and hold further hearings. One Communications has shown no reason for introducing the Settlement Agreement into the record nor any issues of material fact that are raised by the Settlement Agreement that require further hearings. The Settlement Agreement does not change, nor does it seek to change, the facts in the evidentiary record on which we must base our decision. Instead, it represents a series of commitments to which Fairpoint has agreed in exchange for the settling CLECs' agreement to support the proposed transaction. As such, as Fairpoint and Verizon argue, it is really additional argument, which would not necessitate additional hearings.

We recognize, however, that, due to the timing of the Settlement Agreement, parties may not have had an adequate opportunity to respond to the reasonableness of the commitments that Fairpoint has made in the Settlement Agreement and whether these address all of the CLEC issues before the Board. Accordingly, any party may file additional comments on the Settlement Agreement by November 14, 2007. In particular, parties should address whether any aspect of the Settlement Agreement raises concerns about unjust discrimination or other preferential treatment.

SO ORDERED.

Dated at Montpelier, Vermont, this 6th day of November, 2007.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: November 6, 2007

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.